REMARKS/ARGUMENTS

Claims 1-24 are objected to because of the following informalities: Regarding Claims 1, 12, the phrase "capable of" in all occurrences is not a positive limitation but only require the ability to so perform. Applicants have amended the Claims 1 and 12 to require a positive limitation and have deleted the phrase "capable of."

Claims 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Murphy (USPN 6,232,874). Claims 1-5, 10-13, 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy (USPN 6,232,874) in view of Smith, et al. (USPN 6,587,755). Claim 6 is rejected under 35 U.S. C. 103(a) as being unpatentable over Murphy in view of Smith (USPN 6,587,755) and further in view of Geisler, et al. (US 2004/0088205). Claims 7-9, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Smith and further in view of William Cohen (ML 95 provided by Applicant).

Applicants have amended each independent claim to require either "at least one of a linear function of the sensor data, a non-linear function of the sensor data, and a statistical classifier" be used for the classifying or "a statistical classifier" be used for the classifying.

As the Examiner has noted, such a limitation is not found in the Murphy, Smith, or Geisler references. Thus, the Examiner points to the William Cohen reference (submitted by Applicants) for such a teaching. However, the Examiner is reminded that to establish a *prima facie* case of obviousness, and hence to find Claims 1-29 unpatentable under 35 U.S.C. § 103(a) over the combination of Murphy/Smith/William Cohen, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference

7

teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142. In the present case, it is respectfully submitted that all three criteria are not met. It is submitted that here is no suggestion or motivation to modify or combine the references. Even if there was a suggestion or motivation to modify or combine the references, there is no expectation of success.

In the final Office Action dated 17 February 2006, the Examiner states that "Murphy and Smith disclose all the limitations of Claim 1 but fail to explicitly disclose the step of classifying the driver activity state using one of a linear function the sensor data and a non-linear function of the sensor data." In other words, the Examiner admits that Murphy and Smith fail to disclose the limitations of the Applicants claimed invention. However, the Examiner asserts that Cohen discloses such limitations. However, it is respectfully submitted that such an assertion is faulty when the requirements of MPEP at § 2142 are taken into account. For the claims to be unpatentable, i.e., not to meet the requirements of 35 U.S.C. § 103(a), there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Accordingly, because the prior art fails to teach or suggest Applicants claimed invention, claims 1-29 do meet the requirements of 35 U.S.C. § 103(a) and are patentable.

The final Office Action suggests that a graph showing a "linear function" and the use of terms "RIPPER, C4.5," and the like is an indication of Applicants' claimed invention of driver activity being classified by "at least one of a linear function of the sensor data, a non-linear function of the sensor data, and a statistical classifier." This misconstrues the use of the terms in Cohen. Cohen is a general paper describing machine learning systems. The use of the terms "RIPPER, C4.5," and the like are

8

described in an academic and abstract sense to explain machine learning systems. There is no application of the terms to driver activity as is required by Applicants' claims. There is no motivation to combine the vehicle systems of Murphy and Smith with the machine learning systems of Cohen.

In any case, there is no expectation of success to modify or combine the references. A person of ordinary skill in the art would not combine the vehicle systems of Murphy and Smith with the learning systems of Cohen for many reasons, e.g. a vehicle has physical constraints that are not in learning systems, such as the computational expensiveness and inefficiencies cited in Cohen. As such, a person of ordinary skill in the art would not combine the vehicle systems of Murphy and Smith because doing so would be computationally expensive and be inefficient.

In view of the foregoing remarks, it is respectfully submitted that each of the rejections of Claims 1-29 are patentable over the prior art, and that all of the pending claims are in a condition to be allowed. For these reasons, Applicant respectfully requests an Allowance of the pending Claims 1-29.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

9

Appl. No. 10/748,549   Docket No. AS00007
Amdt. Dated July 17, 2006   Customer No. 22917

Respectfully submitted,

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Attachments

10